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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/662,613

09/15/2003

Abdol Hossain Farid

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EXAMINER

KAPUSHOC, STEPHEN THOMAS

ART UNIT

PAPER NUMBER

1634

MAIL DATE

DELIVERY MODE

11/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/662,613

Applicant(s)

FARID ET AL.

Examiner

Stephen Kapushoc

Art Unit

1634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Attached.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1, 4-10, 25, 26, 45 and 81.
Claim(s) withdrawn from consideration: 11-24, 27-43, 46-50, 52-56, 65- 70, 72- 74 and 76-80.

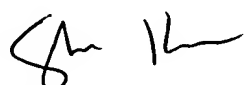
AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____

/Carla Myers/
Primary Examiner, AU 1634



***Advisory Action Before the Filing of an Appeal Brief
Continuation of PTOL-303***

Continuation of **AMENDMENTS** parts 5 and 7. The amendments to the claims submitted 9/26/2007 are entered.

1. The rejection of claims 2 and 63 under 35 USC 112 2nd ¶ for indefiniteness are **WITHDRAWN** in light of the cancellation of claims 2 and 63.

The rejection of claim 45 under 35 USC 112 2nd ¶ for indefiniteness is **WITHDRAWN** in light of the amendment to claim 45 to specify 'reproductive longevity potential traits' instead of 'traits associated with reproductive longevity', where the trait of reproductive longevity potential is defined within the claim.

2. The rejection of claims 25 and 26 under 35 USC 112 1st ¶ for lack of adequate written description is **WITHDRAWN** in light of the amendment to claims to specify that the method requires assaying for the presence of a thymidine at position 3832 of SEQ ID NO: 23, thus specifying the particular nucleotide content required by the claims.

3. The rejection of claims 2 and 57-63 under 35 USC 112 1st ¶ for lack of enablement is **WITHDRAWN** in light of the cancellation of claims 2 and 57-63.

The rejection of claims 1,4-10,25,26 and 45 and 81 under 35 USC 112 1st ¶ for lack of enablement is **MAINTAINED** and applied to newly presented claim 81 for the reasons set forth in the Office Action of 3/26/2007.

4. Regarding newly presented claim 81, for purposes of appeal, the proposed amendment(s) will be entered and the proposed rejection(s) detailed below will be included in the Examiner's Answer. To be complete, such rejection(s) must be addressed in any brief on appeal.

Upon entry of the amendment(s) for purposes of appeal:

Claim(s) 81 would be rejected for the reasons set forth in the rejection under 35 USC 102(b) based upon the teachings of Harumi et al (2001) of the final Office action mailed 03/26/2007. Newly presented claim 81 requires only the method steps of obtaining a sample of genetic material from a pig, and assaying for the presence of a particular genotype in the pig. As such the prior art of Harumi is applicable to the requirements of the methods claimed by claim 81.

Continuation of **AFFIDAVIT OR OTHER EVIDENCE** part 8. The Declaration submitted under 37 CFR 1.132 on 9/26/2007 is not considered.

5. The Declaration of Alan John Mileham filed under 37 CFR 1.132 will not be considered because the Declaration is not timely. MPEP 716.01(A) sets forth the requirements for the timeliness of a declaration submitted under 37 CFR 1.132:

(A) Timeliness. Evidence traversing rejections must be timely or seasonably filed to be entered and entitled to consideration. In re Rothermel, 276 F.2d 393, 125 USPQ 328 (CCPA 1960). Affidavits and declarations submitted under 37 CFR 1.132 and other evidence traversing rejections are considered timely if submitted:

- (1) prior to a final rejection,
- (2) before appeal in an application not having a final rejection,
- (3) after final rejection, but before or on the same date of filing an appeal, upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented in compliance with 37 CFR 1.116(e); or
- (4) after the prosecution is closed (e.g., after a final rejection, after appeal, or after allowance) if applicant files the affidavit or other evidence with a request for continued examination (RCE) under 37 CFR 1.114 in a utility or plant application filed on or after

Art Unit: 1634

June 8, 1995; or a continued prosecution application (CPA) under 37 CFR 1.53(d) in a design application. For affidavits or declarations under 37 CFR 1.132 filed after appeal, see 37 CFR 41.33(d) and MPEP § 1206 and § 1211.03.

In the instant case, Applicants Declaration filed after a final rejection provides no reasons why the evidence of the Declaration was not presented earlier in prosecution (relevant to part (3) above); further the Declaration is not filed with a request for continued examination (relevant to part (4) above). As such, the evidence of the Declaration is not considered.

Continuation of **REQUEST FOR CONSIDERATION/OTHER** part 11. Applicants Remarks of 09/26/2007 have been considered but are not sufficient to put the application in condition for allowance. Applicants' traversal of the remaining rejection of claims under 35 USC 112 1st ¶ for lack of enablement relies upon the evidence submitted in Dr. Mileham's Declaration (Remarks p.15-17). As indicated above the Declaration is not timely and thus not considered; as such the pending claims remain rejected under 35 USC 112 1st ¶ for lack of enablement for the reasons of record as presented in the Final Office Action of 3/26/2007.